FILE COPY

Office-Supreme Court, U.S.
FILED
AUG 28 1958
JAMES R. BROWNING, Clerk

No. 244

In the Supreme Court of the United States

October Term, 1958

JONES BEACH STATE PARKWAY AUTHORITY,
PETITIONER

v.

UNITED STATES OF AMERICA

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Second Circuit

---

BRIEF FOR THE UNITED STATES IN OPPOSITION

J. LEE RANKIN,
Solicitor General,

PERRY W. MORTON,
Assistant Attorney General,

ROGER P. MARQUIS,
Attorney,
Department of Justice,
Washington 25, D.C.

INDEX

	Page
Opinions below	1
Jurisdiction	1
Question presented	2
Statement	2
Argument	4
Conclusion	7

CITATIONS

United States v. *Causby*, 328 U.S. 256	5
United States v. *Miller*, 317 U.S. 369	4

In the Supreme Court of the United States

October Term, 1958

No. 244

JONES BEACH STATE PARKWAY AUTHORITY,
PETITIONER

v.

UNITED STATES OF AMERICA

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Second Circuit

---

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINIONS BELOW

The opinion of the Court of Appeals (Pet. App. 17-25) is reported at 255 F.2d 329. The opinion of the District Court on the merits is reported at 151 F. Supp. 631.

JURISDICTION

The judgment of the Court of Appeals was entered on May 14, 1958. The petition for a writ of certiorari was filed on August 1, 1958. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTION PRESENTED

Whether the Court of Appeals was warranted in concluding (1) that there was basis for the trial court's finding that the condemned land in question had depreciated in value by reason of restrictions upon its use, and (2) that, in light of this factor, the trial court's award was supported by the evidence.

STATEMENT

This condemnation proceedings was instituted by the United States to acquire in fee some 51 acres required by the Government for purposes of expanding an Air Force base, known as Mitchel Field, located in Hempstead, Long Island, New York. The facts, fully set forth in the opinions below, may be briefly stated.

At the time of the taking, the land in question was already subject to avigation easements and to other restrictions in consequence of prior transactions which had taken place between three parties—the United States, the Jones Beach State Parkway Authority ("the State"), and the Meadowbrook Club. In summary, the history of the previous dealings was as follows. The United States had expressed its desire to expand operations at Mitchel Field and to impose easements which would assure that adjoining property owned by Meadowbrook would be kept clear of obstructions. The State, at the same time, was desirous of constructing a parkway which would cut through Meadowbrook property and Mitchel Field. The United States agreed that it would grant an easement over 54 acres of Mitchel Field to enable

the State to construct the parkway. The State, for its part, agreed that it would purchase 200 acres from Meadowbrook (more than it needed for its parkway purposes) and consent to the imposition of easements and use limitations on those lands in favor of the United States. These agreements were carried out.

The 51 acres involved in the present condemnation proceeding—acres which adjoin the air field runways—were acres which had already been subjected to easements and restrictions as a result of the agreements just noted. Specifically, the State had agreed that 24 of the 51 acres involved (those located within the so-called "clear zone") would be kept clear to the ground of all obstructions. The United States had also been granted the right to seal off "clear zone" acres by a security fence. As to the remaining 27 acres (located within the so-called "approach zone"), the State had agreed that they would be kept clear to elevations ranging from zero to 25 feet.

At the trial, which took place before the District Court sitting without a jury, valuation experts for the State and the United States did not vary widely as to the unrestricted fee value of the property. The State's experts estimated $10,500 per acre and the United States' witness $9,000 per acre. Both sides' witnesses based those valuations primarily upon sales of properties in the neighborhood. The properties to which comparison was made were zoned residential, as was the land taken.

The Government's witness expressed the opinion that severe limitations imposed by the easements com-

pletely destroyed the value of half the property and depreciated by 80% the value of the remainder. On this basis, he reached a total encumbered value of $32,220. In so concluding, he considered all uses of the condemned land, including golf and park purposes. The State's witnesses, however, testified that the property had the same value free of easements or subject to the easements because it was dedicated to park purposes.

The District Court found the unencumbered value to be $10,000 per acre. It rejected the State's testimony that the encumbrances did not affect value and agreed with the government witness that the "clear zone" was valueless as a result of the encumbrances. The court disagreed to some extent with the Government's depreciation of the remainder and ordered a total award of $45,800. The Court of Appeals affirmed unanimously, holding that the trial court's findings were supported by substantial evidence.

ARGUMENT

There is no doubt that the courts below followed correct and familiar valuation principles. In accordance with *United States* v. *Miller*, 317 U. S. 369, the District Court undertook to determine what the value of the fee would be in unencumbered state when devoted to its highest and most profitable use—which, as "both parties recognized," was "for residential purposes" (Pet. App. 22). Having determined that value at $10,000 per acre, the court undertook to determine the extent to which unencumbered value had been reduced by "easements and restrictions upon

the utility and future use of the land" (151 F. Supp. at 633). It is "obvious", as the District Court stated (*id.* p. 634), that easements and other restrictions may cause a substantial depreciation of land value. Cf. *United States* v. *Causby*, 328 U. S. 256.

Petitioner suggests that this case must involve a departure from sound principles of valuation because the condemnation award was only $45,000 (an average of approximately $885 per acre), whereas the State's cost in acquiring the acreage was $310,800 ($6,000 per acre). This overlooks the fundamental consideration that when the State purchased the acres in question at $6,000 per acre, they were not subject to the encumbrances which were thereupon imposed with the State's consent and pursuant to its agreement. For the imposition of the encumbrances, the United States paid a very valuable consideration. In Judge Inch's words (*id.*, p. 633), the easements and restrictions on the 51 acres "were granted and imposed in exchange for easements granted the State by the Government for highway purposes through approximately 54 acres of Government-owned land constituting a part of Mitchel Air Base."

Petitioner's argument actually comes down to the proposition that the court over-depreciated because it did not take adequate account of the State's contention that the encumbered lands retained very substantial value (undiminished, in the State's view) for golf and park purposes. However, the extent to which the lands had remaining utility following imposition of the encumbrances and restrictions was an issue of fact. Two courts have examined the facts and

there is no occasion, we submit, for a third evaluation.

Petitioner emphasizes the fact that the condemned lands embrace two holes of the old Meadowbrook golf course, and it suggests that the taking has destroyed value for golf club purposes. This ignores the fact, noted by the Court of Appeals (Pet. App. 25), that these holes fell within the "clear zone" and that, prior to the condemnation, the use of that area was "completely foreclosed by encumbrances, especially the provision for sealing off that area by a security fence * * *."

Petitioner also argues that, at the least, lands in the "approach zone" had undiminished value for park purposes. The District Court concluded, however, that the facts were otherwise, and that the Government's previously acquired easements had substantially impaired the utility of the land for all purposes. It stated (151 F. Supp. at 634-635):

> * * * In view of the established fact that the plane surface throughout the clear zone is at ground level and that in the approach zone the plane varies from zero to 25' above ground level and entirely overlays the entire land surface, it would appear that the utility and value of this land to any prospective purchaser, for any conceivable use, has been severely impaired, if not totally destroyed.

CONCLUSION

The decision below turns on purely factual issues and presents no question warranting review by this Court. The petition for a writ of certiorari should be denied.

Respectfully submitted,

J. LEE RANKIN,
Solicitor General.

PERRY W. MORTON,
Assistant Attorney General.

ROGER P. MARQUIS,
Attorney.

AUGUST 1958.

☆ U. S. GOVERNMENT PRINTING OFFICE 1958 477094 241